

ROBERT L. STEELE

IBLA 80-134

Decided February 22, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring abandoned and void the Travertine King and White Buck No. 1 placer mining claims and the Clinker, Blue Heron, Blue Heron No. 1, and Blue Heron No. 2 lode mining claims. 3833 (UT)

Affirmed in part; set aside in part and remanded.

1. Administrative Procedure: Administrative Review -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, BLM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

APPEARANCES: Dell Steele, Nephi, Utah, pro se; Milton T. Harmon, Esq., Nephi, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dell Steele appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 9, 1979, declaring abandoned and void the Travertine King and White Buck No. 1 placer mining claims and the Clinker, Blue Heron, Blue Heron No. 1, and Blue Heron No. 2 lode mining claims.

The decision of BLM was based upon this Department's regulation, 43 CFR 3833.1-2, as amended, 44 FR 9720 (Feb. 14, 1979) and 44 FR 20428 (Apr. 5, 1979), which states in part: "(a) The owner of an unpatented mining claim * * * located on or before October 21, 1976,

on Federal land * * * shall file * * * before October 22, 1979, in the proper BLM office a copy of the official record of the notice or certificate of location of the claim * * *." BLM found that appellant had violated this section, 1/ because appellant failed to accompany the required documents with a \$5 filing fee for each claim.

In his statement of reasons, Dell Steele provides an explanation for the filing fee deficiency. Appellant's son, Robert L. Steele, was sent by appellant to file the appropriate documents with BLM for the Travertine King, White Buck No. 1, blue Heron, and Blue Heron No. 1 claims. A check for \$20 was prepared to cover filing costs for these four claims. Appellant's son added to this number the Clinker and Blue Heron No. 2 claims, but did not supplement the filing fees by an additional \$10. BLM accepted and cashed appellant's check for \$20. Appellant has subsequently received a check for \$20 issued by the U.S. Treasury as reimbursement.

Thereafter on November 9, 1979, BLM declared all six claims abandoned and void. In so doing, it relied upon 43 CFR 3833.4 which states in part: "(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim * * * and it shall be void." Appellant acknowledges that his check in the amount of \$20 was insufficient to cover filing costs for six claims, but asks this Board to apply this amount to filing costs for the Travertine King, White Buck No. 1, Blue Heron, and Blue Heron No. 1 claims. This, we feel is an appropriate and reasonable solution to the facts at hand. 2/

Similar facts were before this Board in Ann Warnke, 45 IBLA 305 (1980). Therein, the appellant timely tendered location notices and filing fees for 70 mining claims, but also included four additional mining claim notices for informational purposes without supplementing the filing fees by an additional \$20. These latter four claims were accompanied by maps which allegedly conveyed appellant's intent to relinquish the four claims. This Board held in the syllabus:

1/ This regulation implements section 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1782 (1976).

2/ Our decision is motivated by the conduct of BLM in handling a similar situation in United States v. Andy Synbad, AR 034833, as reported in 42 IBLA 313 (1979). Therein, appellant filed a notice of appeal from a decision invalidating his eight mining claims. A filing fee of \$5 per claim, \$40 total, was required to appeal the eight claims. Appellant enclosed only \$8 in filing fees and referred BLM to his affidavit of impecuniosity which had been accepted previously. BLM's response was to advise appellant that unless an additional \$32 were submitted by a date certain, his appeal would be considered as to only one claim.

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

A similar approach is appropriate in the instant case.

The decision of BLM declaring all six of appellant's claims to be abandoned and void is hereby set aside. Upon appellant's resubmission of a \$20 filing fee pursuant to notice by BLM, said fee shall be applied to the four claims of appellant's preference as set forth above. 3/ The remaining two claims, Clinker and Blue Heron No. 2, are properly declared to be abandoned and void for failure to comply with 43 CFR 3833.1-2.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part and set aside in part and remanded for action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

3/ Appellant encloses with his statement of reasons a check, dated November 26, 1979, in the amount of \$10 to cover filing costs for two claims. This payment has not been tendered in a timely manner and will not be applied to correct the earlier deficiency. Said check shall be returned to appellant.

